



BOARD OF INQUIRY (*Human Rights Code*)

IN THE MATTER OF the Ontario *Human Rights Code*, R.S.O. 1990, c. H.19, as amended;

AND IN THE MATTER OF the complaints by Alfred Abouchar dated July 6, 1989, alleging discrimination in employment on the basis of race, place of origin, ethnic origin; association with persons identified by a prohibited ground; and reprisal.

B E T W E E N :

Ontario Human Rights Commission

- and -

Alfred Abouchar

Complainant

- and -

Metropolitan Toronto School Board
and

Le Conseil des Écoles Françaises de la Communauté Urbaine de Toronto

Respondents

DECISION

Adjudicator : Katherine Laird

Date : March 27, 1998

Board File No: BI-0067-93

Decision No : 98-006

Board of Inquiry (*Human Rights Code*)

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TABLE OF CONTENTS

	Page
INTRODUCTION	2
FACTUAL BACKGROUND	2
LEGAL TEST	4
EVIDENCE	7
<i>The Metro Board Complaint</i>	7
<i>The CÉFCUT Complaint</i>	8
<i>Evidence of the Complainant</i>	9
FINDINGS OF FACT	10
<i>The Metro Complaint</i>	10
<i>The Job Description</i>	11
<i>Qualifications of the Complainant</i>	12
<i>Constructive Discrimination</i>	15
<i>Direct Discrimination</i>	17
<i>Consideration of Previous Human Rights Complaint.</i>	21
<i>Conclusion on Factual Issues.</i>	24
<i>The Consensus Issue.</i>	27
<i>The CÉFCUT Complaint</i>	30
<i>The Interview and Selection Process</i>	30
<i>Recommendation of the Interview Committee</i>	31
<i>Performance of the Complainant in the Interview.</i>	31
<i>Support for the Complainant Before the Interviews</i>	32
<i>Fairness of the Selection Process.</i>	36
<i>Qualification for the Position</i>	39
<i>Direct Discrimination</i>	41
<i>Conclusion on Factual Issues</i>	50
REPRISAL	53
VICARIOUS LIABILITY	56
SUMMARY OF FINAL DETERMINATIONS	57
REMEDY	58

INTRODUCTION

On July 6, 1989, Alfred Abouchar filed two complaints with the Ontario Human Rights Commission (the "Commission"): one against the Metropolitan Toronto School Board (the "Metro Board"), and one against Le conseil des écoles françaises de la communauté urbaine de Toronto ("CÉFCUT"). In each complaint, Mr. Abouchar alleged that he had been discriminated against in a job competition on the basis of his race, ethnic origin and place of origin. On February 8, 1995, both complaints were amended to add the allegation that Mr. Abouchar was denied each of the positions because of a previous human rights complaint and because of his association with what was referred to as the "Francophone Multicultural Community". The amendments, in addition to raising reprisal and association, also added an allegation of constructive discrimination to both complaints, but these allegations are not at issue in this final decision, having been dismissed by oral ruling at the close of the Commission's case.

FACTUAL BACKGROUND

The events which form the factual background for these complaints are not in dispute and constitute the recent history of the establishment of a public French first-language education system in Ontario, and more particularly in Municipality of Metropolitan Toronto. On July 10, 1986, the provincial legislature passed Bill 75, entitled *An Act to amend the Education Act and the Municipality of Metropolitan Toronto Act*. The new legislation gave the francophone community in the Province of Ontario, the right to govern French first-language education within existing school systems. In Metropolitan Toronto, Bill 75 provided for the establishment of a new school board, CÉFCUT, referred to in English as The Metropolitan Toronto French-Language School Council. CÉFCUT was to operate within the system of educational governance established by the *Municipality of Metropolitan Toronto Act*, which at the time was a two-tiered system consisting of six area boards of education, one for each municipality, and an umbrella board, the Metropolitan Toronto School Board. Over a quarter of a million children were served by the six area boards, including over 1600 students in French first-language programs.

In order to assist school boards across the province with the implementation of Bill 75, the Ministry of Education established a Provincial Support Group within the Ministry. In addition, on the advice of the Provincial Support Group and at the request of the Metro Board, the Minister of Education appointed a special Task Force in Metropolitan Toronto with a mandate to "assist and advise The Metropolitan Toronto School Board, the boards of education in the municipality of Metropolitan Toronto and the Ministry of Education to ensure the smooth and effective implementation of legislative measures" establishing CÉFCUT ¹.

The Task Force was an advisory body, not a decision-making body. Its role was to make recommendations to the decision-making bodies responsible for implementation of Bill 75. Members of the Task Force were appointed by the Minister of Education and included trustees and members of the French Language Advisory Committees ("FLACs") of the various area boards, representatives of teacher and principal organizations, school board administrators and representatives of parent groups. Representatives of the francophone visible minority community were later added to the Task Force. The Task Force made recommendations on a range of issues affecting the new school board including policy development, staff structure, board structure, programs and services, the physical location of schools, and the hiring and transfer of teachers and other personnel. The final report of the Task Force was submitted to the Metro Board on February 23, 1988 and the evidence indicated that most, if not all, of the recommendations were implemented by the appropriate decision-making bodies.

The events that give rise to this complaint occur after the final report of the Task Force had been received by the Metro Board. In the spring of 1988, members of the Task Force participated in the recruitment of a small staff to assist the new board in its first months of operation. The positions were to be filled initially as secondments to the Metro Board, running from the summer of 1988 to the summer/fall of 1989. It was anticipated that the new board could then itself recruit for permanent positions. One of these competitions was for a position as Assistant Superintendent

¹This statement of purpose is taken from the "Planning Document for Task Force" prepared by the Bill 75 Provincial Support Group, January 1987, page, (Exhibit #2).

of French Language Programs. The position was not filled, and the competition is the subject of the complaint against the Metro Board.

Elections for the trustees of the new school board were held in November 1988 and CÉFCUT became fully operational under the terms of the legislation on January 1, 1989. One of the first tasks of the new board was to fill the still-vacant position of Assistant Superintendent. In fact, immediately after the elections, the position was re-posted using the advertisement developed for the prior competition. The competition was held in December 1988 and is the subject of the complaint against CÉFCUT.

LEGAL TEST FOR EMPLOYMENT DISCRIMINATION

The legal standard for a *prima facie* case of employment discrimination was recently restated by the Federal Court Trial Division in *Canada v. Chandler et al.* (1997), 29 C.H.R.R. D/300 at para 33- 35, as follows:

There exist two tests, very similar, which can be applied to determine whether a *prima facie* case has been made out in the employment context. The first was enunciated in *Shakes v. Rex Pak Ltd.* (1981), 3 C.H.R.R. D/1001 (Ont. Bd. Inq.), and described the *prima facie* case thus [at D/1002, para. 8918]:

- (a) that the complainant was qualified for the particular employment;
- (b) that the complainant was not hired; and
- (c) that someone no better qualified but lacking the distinguishing feature which is the gravamen of the human rights complaint subsequently obtained the position.

The second was set out in *Israeli v. Canadian Human Rights Commission* (1983), 4 C.H.R.R. D/1616 [AT D/1618, para. 13865]:

- (a) that the complainant belongs to one of the groups which are subject to discrimination under the *Act*, e.g., religious, handicapped or racial groups;
- (b) that the complainant applied and was qualified for a job the employer wished to fill;
- (c) that, although qualified, the complainant was rejected; and
- (d) that, thereafter, the employer continued to seek applicants with the complainant's qualifications.

Each applies to a different situation. *Shakes* applies to situations where someone other than the complainant is hired. *Israeli* applies when the employer does not hire the complainant and then continues to look for employees.

The two tests articulated by the Federal Court are useful in considering whether the Commission has established a case sufficient to shift the *evidentiary* burden of proof to the respondents. In considering the two complaints at issue in this proceeding, the *Israeli* test would have application to the Metro Board complaint, where the competition was cancelled and the position re-advertised, while the *Shakes* test would have application to the CÉFCUT complaint, as another candidate was hired to fill the position. The respondent CÉFCUT, in particular, relied on the *Shakes* test in arguing that a failure to prove the complainant's equivalent or superior qualifications would be fatal to the Commission's case against it.

However, the tests in *Shakes* and *Israeli* are not a complete statement of the applicable law. Depending on the factual circumstances, proof that the complainant was an equivalent or better candidate will not always be essential to the *legal* burden of proof in a case of employment discrimination. A finding of discrimination will be made out if the Commission can prove on the balance of probabilities that the complainant was treated unequally in the competitions, and that one reason for the unequal treatment was his membership in a group identified by prohibited ground under the *Human Rights Code* ("*Code*"). It will be a question of fact in each case as to whether a prohibited ground of discrimination was a factor in the unequal treatment, and further, whether the discriminatory factor contributed to the decision not to hire the complainant. Even

a completely unqualified applicant can be discriminated against in a hiring process on the basis of a prohibited ground, but in those circumstances, the discrimination would not likely be a proximate cause for the applicant's lack of success in the competition. Clearly the quantum of damages will be affected by a determination that discrimination affected the opportunity of a job applicant to compete equally, but not the actual selection decision.

In making a determination as to whether or not discrimination was a factor in a job competition, it will often be necessary to consider circumstantial evidence. There is some dispute in the jurisprudence as to the appropriate standard of proof to be applied in drawing inferences from circumstantial evidence². In making inferences from circumstantial evidence, I am of the view that the civil standard of proof on the balance of probabilities is the applicable standard. This approach has recently been approved by the Federal Court Trial Division in *Canada (A.G.) v. Lambie (No. 2)*, (1996), 29 C.H.R.R. D/483 at para. 37-38:

The first issue to be addressed is the burden of proof on the claimant with respect to whether the discriminatory practice led to the loss of a possibility of employment or the probability of employment. This issue was discussed in *Canada (A.G.) v. Morgan*, [1992] 2 F.C. 401 [21 C.H.R.R. D/87] (C.A.). In *Morgan*, the Court was split as to whether the appropriate standard of proof was a "possibility" or a "probability". Although MacGuigan J.A. dissented in the result, there was no majority opinion on the appropriate test in such cases because Mahoney, J. A. held that it was unnecessary to decide the issue. I agree with the following statement of the appropriate test given by MacGuigan J.A. (at 425 [D/101, para.38]):

[A tribunal] is entitled to look at the probable result of the whole process in the light of the evidence before it. The result does not have to be certain, but rather to be based on the best inference the tribunal can make from the facts. [Emphasis in original]

²See discussion in Vizkelety, B., *Proving Discrimination in Canada*, Toronto: Cardwell, 1987, at 142. Vizkelety rejects the rule in *Hodge's Case* (1838), 168 E.R. 1136 at 1137 as applied in *Kennedy v. Board of Governors of Mohawk College*, unreported Ont. Bd. In. 1973 and subsequent decisions, including *Toth v. Sassy Cuts* (1987), 8 C.H.R.R. D/4376 at para.34295. The issue of the appropriate standard of proof in considering circumstantial evidence is also discussed in *Crane v. McDonnell Douglas Canada Ltd.*, unreported Ontario Board of Inquiry decision, August 1996.

In my view, the claimant's burden on this issue is the same as with any other issue. The claimant bears the civil burden. This means that a claimant must establish, on a balance of probabilities, that he or she lost either a job or the possibility of a job. Of course, whether the claimant can establish the definitive loss or the loss of only the opportunity to compete will affect the quantum of damages to which he or she is entitled, but not the entitlement itself.

Accordingly, in drawing inferences based on circumstantial evidence, a finder of fact need not be satisfied that the inference is inconsistent with any other rational explanation, but rather that it is reasonable, and more probable than not, based on all the evidence, and more probable than any other possible inferences. In some cases, it will be appropriate to draw an inference from factors which, if considered in isolation, might not support a finding of discrimination. Where the facts establish differential treatment, the reason for that treatment must be considered in the context of all the evidence, including the general conduct of a respondent, and any verbal remarks or indications of a tendency to categorize by prohibited ground: *Toth v. Sassy Cuts*, *supra* at para. 34286; *Williams v. Export Plastics Co.* (1981), 3 C.H.R.R. D/1009 at para. 8984; *Suchit v. Sisters of St. Joseph's* (1983), 4 C.H.R.R. D/1329 at para. 11549-11550. In cases involving a challenged employment competition, the relative qualifications of the complainant, as compared to other applicants, will often be one of the factors to be considered in making a determination as to whether it is reasonable to draw an inference of discrimination.

EVIDENCE

The Metro Board Complaint

In addition to the complainant, the key witnesses for the Commission in respect of the complaint against the Metro Board were Marie-Paul Gallop and Yvette Szmidt, both of whom were members of the Task Force and served on the selection committee for the disputed job competition. Marie-Paul Gallop was President of Parent-Teacher Association at école publique Gabrielle Roy in Toronto. She had lobbied for parent representation on the Task Force and was appointed by the Minister to represent parent interests on the Task Force. Yvette Szmidt was the alternate representative to the Task Force from the French-Language Advisory Committee of the Board of

Education for the City of North York (the "North York Board"). She was and is a full time professor at Glendon College, York University.

The witnesses for the Metro Board included Ann Vanstone, Board Chairperson, and two senior staff, Charles Brown and Carole Olsen. Charles Brown was Director of Education for the Board from 1974 to 1989, and in that role, he made the recommendation to the Board to cancel the disputed job competition. Carole Olsen was Superintendent of Educational Resources for the Metro Board, and was very involved in the transfer of resources and staff to CÉFCUT.

Also testifying for the Metro Board was André Lalonde, Superintendent of French-Language Programs at the Metro Board during the relevant period. Mr. Lalonde was seconded from the Ministry of Education where he had served as senior staff to the Assistant Deputy Minister for French Language Education. As part of his responsibilities at the Ministry, Mr. Lalonde had lead responsibility for the Bill 75 Provincial Support Group and later served as co-ordinator to the Task Force, before being hired to fill the secondment as Superintendent. Mr. Lalonde was a member of the selection committee and, as Superintendent during the transitional period, was to be the direct supervisor of the successful candidate.

In addition, two members of the Task Force were called as witnesses by the Metro Board. Claudette Gillispie was the President of the French-Language Advisory Committee for the Board of Education for the City of Scarborough (the "Scarborough Board"), and a member of the selection committee in the disputed job competition. Simone Abouchar was President of the French-Language Advisory Committee for the North York Board and served as its representative on the Task Force, with Yvette Szmids as her alternate. Ms Abouchar was first elected as a trustee of CÉFCUT in 1988. She is the wife of the complainant; she and her husband separated in 1995.

The CÉFCUT Complaint

The witnesses who gave evidence on behalf of the Commission in respect of the complaint against CÉFCUT included Clay Derstine, a member of the French-Language Advisory Committee of the

Board of Education for the City of Toronto (the "Toronto Board") for many years and a newly elected CÉFCUT trustee; and Lilya Prim-Chorney, who was elected to the French-Language Advisory Committee for the North York Board in 1986.

The witnesses called by CÉFCUT included Mr. Lalonde, who had been hired as Director of Education at the new board at the time of the second competition; Anne Ladouceur, then current Chair of CÉFCUT; and Antoine DeRose and Paul D'Aoust, both newly elected CÉFCUT trustees in December 1988. These four witnesses, together with Mr. Derstine, comprised the selection committee in the second competition.

In addition, the Commission and CÉFCUT both relied on expert evidence. For the Commission, Mr. Adrian Johnson was qualified as an expert in bias-free recruitment, and Dr. S. Khan as expert on the impact and effect of stereotyping on racial minorities. For CÉFCUT, Dr. Kenneth Leithwood was qualified as an expert in educational administration and in particular, in the identification and analysis of the knowledge, skills and abilities required to function as a supervisory officer in the Ontario public school system. The Metro Board also relied on the evidence of Dr. Leithwood.

Evidence of the Complainant

Mr. Abouchar gave evidence in respect of both complaints. His evidence with respect to his background and qualifications was largely undisputed and is summarized here for ease of reference. Mr. Abouchar testified that he was born in Egypt of Lebanese descent, and emigrated to Canada in 1969. He received his Bachelor of Education degree from the University of Western Ontario in 1972, and a Master of Education degree from the Ontario Institute for Studies in Education in 1985. At the time of the competitions which are the subject of these complaints, Mr. Abouchar had taught in Ontario secondary schools for over a dozen years and had received excellent evaluations as a teacher. He was qualified as a science specialist and as a principal, and had obtained certification from the Ministry of Education as a supervisory officer in 1981. He had taught on a part-time basis or as a guest lecturer at the University of Ottawa, Laurentian University, Glendon College (York University) and Humber College. As well, Mr. Abouchar

had acted as a curriculum advisor to the Ministry of Education (1981-1984) and had been employed by the Ministry as a "Provincial Consultant" (1978-1980). At the time of the disputed job competitions, Mr. Abouchar was seconded to the Ministry as Secretary General of the Council for Franco-Ontarian Education (1988-1990).

Mr. Abouchar testified that, in January 1987, he filed a human rights complaint against the North York Board alleging discrimination on the basis of place of origin, race and ethnic origin as a result of being denied a position as principal at Étienne Brûlé Secondary School.

FINDINGS OF FACT

The Metro Board Complaint

The position at issue in the complaint against the Metro Board had the title of "Assistant Superintendent, French-Language Programs". It was advertised as a secondment to the Metro Board for the period from August 1, 1988 to December 31, 1989. The advertisement for the position stated that the Assistant Superintendent would be expected to "provide supervision and co-ordination for the planning and establishment of learning services" for the new Metropolitan Toronto French-Language School Council (that is, CÉFCUT) and to assist in "implementation of the Council". Under the heading "Qualifications", the job posting stated:

Candidates for this secondment must:

- ♦ possess a Supervisory Officer Certificate;
- ♦ have extensive and varied academic and supervisory officer experience;
- ♦ have extensive and varied experience and working knowledge of the policies and regulations of the Ministry of Education, particularly those dealing with French as a first language governance and programs;
- ♦ have demonstrated excellent communication and administrative skills, be able to provide strong leadership and have the ability to maintain excellent liaison with the various constituencies within the French-language community;
- ♦ have demonstrated skills in curriculum review, development and implementation; and

- ♦ excellent oral and written communication skills in French and English.

Preference will be given to Candidates who have experience in the secondary panel as well as an understanding of or work experience in an urban French-language minority environment.

Alfred Abouchar was one of three candidates who applied for the advertised position. All three were interviewed by a committee which was to select a candidate for recommendation to the Metro Board. The committee was composed of:

Denise Gosnell (Trustee, Metro Board)
 Marie-Paul Gallop (President, Gabrielle Roy Parent-Teacher Association)
 Claudette Gillespie (Chair, Scarborough Board FLAC)
 Yvette Szmidt (Member, North York Board FLAC).
 Marie Carmel Boutin (newly appointed Task Force Member)
 Marc Duez (Chair, Toronto Board FLAC)
 André Lalonde (Superintendent, French Language Programs, Metro Board)

Ms Gosnell apparently chaired the committee, assisted by Mr. Lalonde. Except for Marc Duez, all members of the interview committee were members of the task force. Marie Carmel Boutin had just been appointed to the Task Force as a representative of the francophone visible minority community.

The Job Description

A job description for the position had been prepared by an outside consultant at the request of Mr. Lalonde. The description, which was prepared for the purpose of determining an appropriate remuneration level, was not made available to members of the interview committee other than Mr. Lalonde. The job responsibilities were broken down by the consultant as follows:

Duties/Responsibilities

Approximate
Percentage
of Time

-
1. Supervises the staff of the three major areas. a. Cooperative. Continuing and Adult Education: b. Social Education and Psychological

15%

Services: and c. Resource Centre and Education Technology.

2. Reviews and assesses existing curriculum for French language studies and revises it to meet the needs of the Council. Assesses the future needs of the Council and develops suitable curriculum material/programs. Develops and administers professional development programs which complement the approved curriculum. 50%
3. Develops a system of hiring and maintaining an appropriate complement of supply teachers. Arranges for schools to have the capacity to call in supply teachers. 5%
4. Develops and implements programs, events and activities (animation culturelle) for the purpose of supporting, enhancing and encouraging the use of French language throughout the community. 5%
5. Acts as Personnel Officer for the teaching staff of the Council. Negotiates and administers the collective agreement(s). Recruits teaching staff and administers salary and benefit programs. Develops and administers other related personnel policies and procedures regarding teaching staff. 15%
6. Identifies needs for daycare facilities in the French language community. Arranges for space in Council buildings and facilitates the provision of suitable daycare programs by external agencies. 10%

Qualifications of the Complainant

The evidence established that, although the job competition was cancelled after the interviews, all of the candidates could be, and were, considered to be generally qualified for the position. The fact that the candidates were qualified is noted in the minutes of a selection committee meeting following the interviews. None of the candidates had previous experience as a full-time assistant superintendent or superintendent, but all three had the necessary accreditation as supervisory officers and had relevant experience as consultants or education officers with the Ministry of Education.

Although the job posting did not say experience as a principal or vice principal was necessary, the evidence established that it would be unusual, in the normal course, for a candidate without experience as a principal, vice-principal or supervisory officer to be successful in obtaining a

position as a superintendent or assistant superintendent for a board of education. Mr. Lalonde recalled that two candidates, including Mr. Abouchar, lacked experience as a principal or vice-principal. The other candidate who had not been a principal or vice-principal did have some supervisory officer experience as part of his duties in the Ministry of Education's Ottawa Regional Office. Mr. Abouchar was qualified both as a principal and as a supervisory officer, but his closest relevant experience was a one year term as an acting high school department head. He had also served as a night school principal in the heritage language program and in a position called "Dean of Student and Community Affairs" at Étienne Brûlé Secondary School. Both of the other candidates had more supervisory and managerial experience than Mr. Abouchar.

The fact that Mr. Abouchar had not held a position as a principal or vice-principal weighed against him in the assessment of three of the members of the interview committee: Ms Gillipsie, Mr. Lalonde and Ms Gosnell. Nevertheless, four of the seven committee members supported him as their top candidate on the first vote: Ms Szmidt, Ms Gallop, Ms Boutin and Mr. Duez. The two supporters who gave evidence, Ms Szmidt and Ms Gallop, both testified that he gave an excellent interview, and this was supported by the evidence of Ms Gillipsie and Mr. Lalonde. It is undisputed that, during a second round of discussions on the part of the interview committee, Mr. Lalonde indicated his willingness to support Mr. Abouchar as the candidate endorsed by the majority. Even Mr. Brown, who testified that Mr. Abouchar lacked the usual experiential prerequisites, acknowledged that he would have had no difficulty recommending him to the Metro trustees as the successful candidate had the committee been unanimous in its support. Mr. Abouchar's basic qualifications for the position, as well as his excellent record as a teacher, curriculum advisor and education consultant for the Ministry, were not disputed by respondent witnesses.

Further, in finding that Mr. Abouchar was qualified for the position, I rely particularly on the acknowledged fact that this was not a standard assistant superintendent position for a up-and-running school board. This was a temporary secondment to assist a not-yet-established board in its initial program planning and implementation. Mr. Brown testified that, during the transitional period, the successful candidate would work with the superintendents at the area boards delivering

French first-language programs and would not be responsible for teacher or principal/vice-principal evaluations. Although Metro Board relied heavily on the fact that Mr. Abouchar lacked valuable supervisory and managerial experience as a principal or supervisory officer, and argued that this was the reason for his lack of success in the competition, the evidence of Mr. Brown established that the successful candidate would not be responsible for the usual supervisory and managerial duties of an assistant superintendent for at least the first five months or so of the secondment.

In fact, the job description suggested that the interim position would draw on many of the skills which Mr. Abouchar had developed as an educational consultant at the secondary level. A very significant component of the job (50%) would involve curriculum review and assessment, as well as the development and administration of professional development programs. Mr. Brown referred to the position as "superintendent of curriculum", and testified that the successful candidate would work with principals to assess the programs currently available and to facilitate the design of new programs. He acknowledged in cross-examination that Mr. Abouchar's employment as an educational consultant for the Ministry was "good experience" for the position.

Moreover, Mr. Abouchar would have been an ideal candidate with respect to the "animation culturelle" component of the position. He had very extensive leadership experience in facilitating community and social activities within the French-language educational and multicultural communities in Toronto, notably as a founder of the Federation des Eleves du Secondaire Franco-Ontarien (FESFO), and of FRANCOM (an association of community schools), and the Association Multiculturelle Francophone de l'Ontario (AMFO). On this basis, and as the only candidate from the Toronto area, Mr. Abouchar was also certainly well qualified in terms of item 6 in the job description - the identification of daycare facilities in the Toronto French-language community. It was generally acknowledged by all the witnesses that Mr. Abouchar was very familiar with the francophone community in Toronto, and with the resources and facilities used by the community. As well, I note that Mr. Abouchar met each of the qualifications listed as preferences in the advertisement, that is, experience in the secondary panel and experience in a urban French-language minority environment.

Finally, in finding Mr. Abouchar to be qualified for the position, I have taken into account the fact that there were only two other applicants for the position, neither of whom was from Toronto. Mr. Brown explained the small number of applicants with reference to the size of the pool of potential applicants in Toronto, which he described as "very small". He testified that the main source of applicants would be French first-language programs in other jurisdictions, including the Catholic separate school system. He speculated that potential applicants from northern Ontario or the Ottawa-Carleton area were perhaps not interested in moving to Toronto for a short-term position with a new and very small school board. From this perspective, Mr. Abouchar's local experience would be of particular value, as he was one of a very limited pool of potential applicants, and the only candidate who would not need time to familiarize himself with the community. Ms Gillipsie, Ms Szmids and Ms Gallop all commented on the fact that his familiarity with the community made his candidacy attractive.

Constructive Discrimination

Having found that Mr. Abouchar was qualified for the position, the question to be determined is whether or not his treatment in the competition, and his ultimate lack of success, were in any way tainted by consideration of a prohibited ground of discrimination under the *Code*. I have previously determined, on a motion brought by the respondents, that a *prima facie* case of constructive discrimination had not been established. There was no evidence at the close of the Commission's case of a neutral factor which had a disparate impact on the complainant on the basis of race, ethnic origin or place of origin. In fact, the evidence established that Mr. Abouchar did very well in the interview process and was the first choice of the majority of the members of the selection committee. Even the one member of the committee who was adamant in her refusal to support his candidacy, Ms Gillipsie, testified that his presentation during the interview was "absolutely impeccable" and compared his interview favourably to the interviews of other two candidates. Whatever the flaws in the selection process, there was at the close of the Commission's case, no evidence of an adverse impact on the complainant on the basis of race or origin.

In the course of the Metro Board's case, there was one piece of evidence led which might suggest constructive discrimination. Ms Gillipsie testified that the reason that she did not support Mr. Abouchar's candidacy was because he lacked managerial and supervisory experience. When asked in cross-examination to be more specific, the witness said she was looking for ten years experience in a variety of senior positions, listing the possibilities as director of education, area superintendent, superintendent of planning, superintendent of special education, superintendent of French language services, and principal. When Mr. Brown was asked in cross-examination how many visible minority candidates in the French first-language system would have this kind of experience, he testified that he could not think of any. If such a level of experience was in fact a requirement of the position, it might support a *prima facie* case of constructive discrimination.

However, upon reviewing the evidence, I find that it is unnecessary to consider re-opening the question of constructive discrimination. I do not consider Ms Gillipsie's evidence persuasive in this area. While I accept that supervisory experience was considered in the assessment of candidates, I find that her evidence overstated both the level of experience considered necessary and the importance placed on supervisory experience by herself and by the committee during the competition.

I have come to this conclusion for several reasons. First of all, although she stated that she might have accepted five years experience to achieve consensus, she acknowledged in evidence that none of the candidates were qualified, according to her experience requirements, and that this would have been apparent from their resumes. It is difficult to accept that, if this was her view, she would not have said so at the outset of the selection process. In fact, even after the interviews, no other witnesses recalls her commenting unfavourably on the experience of any other of the candidates, and Mr. Lalonde testified that she ranked the candidates, and had a "first choice" which matched his own first choice candidate. This contradicts her testimony that Mr. Abouchar impressed her the most during the interviews, but that she could not support any of the three candidates. I also note that, when asked about the shortage of apparently eligible candidates per her criteria, she said that the experience could be gained in the English system, as long as the candidate could speak French in an acceptable way. This suggestion that French-language

fluency was of limited importance is so contrary to the evidence of all other witnesses as to undermine entirely the reliability of her evidence on the criteria applied. I find that the level of experience cited by Ms Gillipsie was not applied as a discriminatory barrier in the competition and in fact was not applied to the candidates at all as suggested in her evidence. There is, therefore, no issue of constructive discrimination to be considered at this stage.

Direct Discrimination

Is there evidence of direct discrimination? The Commission submitted that I should infer, primarily from conduct and comments attributed to Ms Gillipsie and Mr. Lalonde, that the selection process was tainted by direct discrimination against Mr. Abouchar as an immigrant francophone. It was the position of the Commission that Mr. Abouchar's candidacy for the school board position, and the conduct of Ms Gillipsie and Mr. Lalonde on the selection committee, should be viewed against a background of internal disputes dividing the French language community on the basis of place of origin, ethnic origin or race.

There was evidence that several diverse communities were involved in the establishment of the new school board. In describing the diversity of the population, different witnesses used different terms, often not consistently. For example, witnesses referred to themselves and/or others as francophones, multicultural francophones, ethnoculturals, visible minority francophones, Franco-Ontarians, "Franco-Ontarien pure laine", "Franco-Ontarien de naissance", francophiles, and "section 23 francophones", the latter term being a reference to the language rights provision in the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, Schedule B to the *Canada Act 1982* (U.K.) 1982, c. 11 ("*Charter*"). In order to discuss the evidence, it is necessary to clarify our basic terms of reference. For the purpose of this decision, the word "francophone" will be used to describe any person living in Ontario who is fluent in the French language, and the term "Franco-Ontarian" will be used to refer to a person born in Ontario whose family has for some generations been part of the French-language community in the province.

The testimony of several witnesses established that the student population of the existing French first-language schools in Toronto included a very high percentage of immigrant children, as well

as children from bilingual or English-speaking families who, it was suggested, were using the French-language schools as a kind of enriched French immersion program. Apparently many Franco-Ontarians students were enrolled in the Catholic separate school system, or in French immersion programs in the English system. These Franco-Ontarian students, and all francophone students in the separate school and English systems, were viewed as likely "recruits" for CÉFCUT. The evidence of some witnesses suggested that there was a real or apparent tension in the new system between those who were perceived to give priority to the needs of the students already in the system, and those who were perceived to give priority to the recruitment of new students into the system, particularly Franco-Ontarian students in the English or the separate school systems. Because of the apparent dominance of immigrant children in the existing French first-language public system, this polarity in priorities was associated with a differentiation based on place of origin.

Against this background, the Commission submitted that Mr. Abouchar was discriminated against because he was an immigrant francophone, and closely identified with the francophone multicultural community as a founder of AMFO. In asking me to infer discrimination, the Commission relied in particular on remarks alleged to have been made by Ms. Gillipsie and Mr. Lalonde in discussions unrelated to the selection process. With respect to Ms Gillipsie, the Commission relied primarily on comments attributed to her by Simone Abouchar. Ms Abouchar testified that Ms Gillipsie voted against a candidate in another Task Force competition for the stated reason that she was not a Franco-Ontarian, and that Ms Gillipsie made a veiled reference to the fact that the candidate was a person of colour. Ms Gillipsie denied the comments and insisted that she was one of that candidate's "biggest supporters".

Ms Abouchar's evidence on this is not supported by Mr. Lalonde, who also served with Ms Gillipsie on the same selection committee, and on others. Mr. Lalonde was very clear in stating that he did not recall the comments attributed to Ms Gillipsie, and that nothing about her participation in any of the selection committees indicated to him a bias or prejudice against non-Franco-Ontarians. I note that the candidate who was the alleged subject of the discriminatory remark was successful in the competition. Without other testimony, or a written record, I find

it impossible to prefer the evidence of Ms Abouchar on this point over that of Ms Gillipsie and Mr. Lalonde.

In arguing that Mr. Lalonde discriminated on the basis of Mr. Abouchar's background, the Commission relied primarily on comments attributed to him by Ms Gallop. Ms Gallop testified that, during a discussion about the not-yet-established school board, Mr. Lalonde said to her that Franco-Ontarians had struggled for a long time to get their own school board and that "new arrivals" were "riding on the coat-tails of the Franco-Ontarians". To give a context to her testimony, Ms Gallop explained that she was from France, and as a parent at école publique Gabrielle Roy, she had initially been opposed to the establishment of a separate school board for French language education. She testified that the parent association believed that the students at Gabrielle Roy benefited from the resources available through the area boards and the Metro Board, but later supported the new board and were anxious to be involved in its governance.

The Commission also relied on evidence given by Ms Gallop in urging me to find that Mr. Lalonde only pretended to support Mr. Abouchar, using Ms Gillipsie's intransigence as a cover for his own opposition to Mr. Abouchar. The Commission relied on her testimony that Mr. Lalonde reminded the interview committee of the previous human rights complaint filed by the complainant, at the same time as he announced that he would change his vote to support Mr. Abouchar. Ms Gallop and Ms Szmidt both testified that they believed that Mr. Lalonde was insincere in changing his vote to support the complainant. It was also their evidence that the minutes and reports prepared by Mr. Lalonde for the Task Force and the interview committee were inaccurate and misleading. In particular, they criticized the June 17, 1988 selection committee minutes prepared by Mr. Lalonde for failing to reflect the committee's deliberations and the final vote tally which, according to their evidence, was six to one in favour of Mr. Abouchar. The minutes state, on page two, that after Mr. Lalonde changed his vote, it was still "difficult for several members of the Committee to be won over to the election of one particular candidate."

Viewed against the background of community dissension, I do not doubt Ms Gallop's evidence that Mr. Lalonde made a remark that indicated to her that he resented the participation of non-Franco-Ontarian parents in some way. Mr. Lalonde acknowledged that there were different points of view about educational governance within the French language community, but denied making the particular comments attributed to him. He testified that his use of the word "Franco-Ontarian" included all francophones, regardless of place of birth, and suggested that Ms Gallop may have simply misunderstood a reference to the Franco-Ontarian community as excluding immigrants. He also maintained that he was sincere in changing his vote to endorse the majority candidate, and that the minutes which he prepared were accurate. With reference to the June 17, 1988 minutes, he explained that his recollection was that, even after he changed his vote, Ms Gosnell as well as Ms Gillipsie continued to refuse to support Mr. Abouchar.

In view of his denial and the passage of time, I am not prepared to make a precise finding as to the content and significance of his remark to Ms Gallop or to infer on that basis, that place of origin discrimination tainted the disputed job competition. The comment is too remote and unclear in its references; it is being recalled from a conversation that took place almost ten years before the testimony was given, and which did not relate to the job competition.

However, I have reviewed the interview committee and Task Force minutes, as well as the report to the Metro trustees with respect to this competition, and I find that they are far from clear in a number of areas. By Mr. Lalonde's admission, the minutes do not reflect fully the disputes and discussion which took place at the time. In particular, I note that the June 17, 1988 minutes are inaccurate in suggesting that "several" members of the committee could not support Mr. Abouchar. I accept the evidence of Ms Szmidt and Ms Gallop that only Ms Gillipsie refused to support the majority's choice of Mr. Abouchar after Mr. Lalonde changed his vote. Although three of the seven members of the committee initially ranked a candidate other than Mr. Abouchar first, I find that Ms Gosnell, as well as Mr. Lalonde, later agreed to support Mr. Abouchar as the candidate favoured by the majority of the committee. Mr. Lalonde and Ms Gillipsie testified that Ms Gosnell did not change her position, but the evidence of Ms Szmidt and Ms Gallop on this

point is supported by the testimony of Mr. Brown as to what Mr. Lalonde told him at the time. Ms Gosnell was not called as a witness.

Accordingly, I find that Mr. Lalonde did prepare inaccurate or misleading minutes which had the effect of obscuring the extent of the support for Mr. Abouchar. Further, although I accept that Mr. Abouchar's lack of supervisory experience was one reason for Mr. Lalonde's preference for another candidate, it was not, in my view, a sufficient explanation for not accepting the majority choice, given Mr. Abouchar's other qualifications and the particular characteristics of the contested position, as discussed above. This finding is corroborated by the very fact that Mr. Lalonde changed his vote to support Mr. Abouchar. Similarly, I have found that the explanation offered by Ms Gillipsie for her refusal to support the complainant (that is, lack of experience) was overstated in her testimony. The evidence as a whole, and particularly the testimony of Mr. Brown and the written job description, suggests that lack of experience was a legitimate factor weighing against the complainant but was not a sufficient explanation for Ms Gillipsie's intransigence.

Nevertheless, it would not be appropriate to draw an inference that the competition was tainted by discrimination on the basis of place of origin when, in my view, the evidence points in a different direction. An inference of discrimination is not appropriately drawn where, as in this case, the evidence supports another, more probable explanation. I am referring to the considerable evidence establishing that Mr. Abouchar's previous human rights complaint was discussed by the interview committee and was at least one reason why his candidacy was not successful.

Consideration of the Previous Human Rights Complaint

All of the witnesses who were on the committee testified that Ms Gillipsie raised the previous complaint as a negative factor in discussions following the interviews. The only exception was Ms Gillipsie herself who denied raising the issue and maintained that her objection to the complainant was based solely on his lack of supervisory experience. Both Ms Schmidt and Ms Gallop testified that the complaint was relied on by Ms Gillipsie to support her contention that Mr.

Abouchar was a troublemaker. Ms Szmidt testified that Ms Gillipsie characterized the complainant as someone who "splits the community", and used the complaint and the establishment of AMFO as examples. Mr. Lalonde testified that Ms Gillipsie referred to the complaint in suggesting that Mr. Abouchar would not handle conflict well, or be an effective problem-solver. He also testified that he immediately firmly instructed Ms Gillipsie and the whole committee that it would be inappropriate to consider the fact that Mr. Abouchar had filed a human rights complaint. His evidence on this latter point is not supported by the evidence of any of the other witnesses.

Given that Ms Gillipsie raised the previous human right complaint as an issue in the committee's deliberations, and that she was the only member in the end to refuse to support Mr. Abouchar as the majority candidate, two key questions were put in dispute by the testimony of members of the selection committee:

Were Ms Gillipsie and the committee as a whole cautioned that consideration of the complaint would be inappropriate?

Was the issue of the complaint dropped by Ms Gillipsie or did it continue to be a reason for her opposition to Mr. Abouchar's candidacy?

Of the four witnesses who were members of the interview committee, two (Szmidt and Gallop) testified that Ms Gillipsie never abandoned her objection that he was a troublemaker as demonstrated by his complaint and that Mr. Lalonde never voiced disapproval; one (Lalonde) testified that the human rights complaint was raised as a negative factor by Ms Gillipsie only once, and never again raised after he expressed firm disapproval; and one (Gillipsie) testified that she never raised the previous complaint as an issue at all and could not recall Lalonde having addressed the issue. Both Mr. Lalonde and Ms Gillipsie maintained in their evidence that the reason cited by Ms Gillipsie for her continuing opposition to Mr. Abouchar's candidacy was his lack of supervisory experience, but this was denied by Ms Szmidt and Ms Gallop.

If we examine the evidence of Mr. Brown for its corroborative value, we find that his testimony supports Szmidt, Gallop and Lalonde on the issue of whether Ms Gillipsie raised the complaint,

and confirms that Mr. Lalonde told him at the time that the issue was dropped. However, Mr. Brown's evidence does not support Lalonde on the issue of whether he expressed strong disapproval. Mr. Lalonde was Mr. Brown's primary source of information at the time of the dispute. Mr. Brown testified that Mr. Lalonde assured him that the issue of the complaint was not a continuing consideration in the deliberations of the interview committee and not a factor in the decision of Ms Gillipsie to withhold support for Mr. Abouchar. Mr. Brown did not testify that Mr. Abouchar assured him at the time that he had cautioned the committee about the inappropriateness of considering a human rights complaint. In cross-examination, Mr. Brown was specifically asked "What steps did Mr. Lalonde tell you he took in order to expunge this consideration in the committee's deliberations?" Mr. Brown answered that he was assured by Mr. Lalonde that he went back to the committee and the committee "went at it again", and that Mr. Lalonde and Ms Gosnell both changed their votes to support Mr. Abouchar, but that Ms Gillipsie refused to support Mr. Abouchar because of his "qualifications and experience". Mr. Brown testified that Mr. Lalonde told him that Ms Gillipsie was "intransigent and would not change her vote."

I find that no warning was in fact delivered to the committee with respect to the inappropriateness of considering the previous complaint. If Mr. Lalonde commented at all on the fact that the complaint was raised, he could not have done so in a clearly disapproving way. None of the committee members could recall being cautioned. Anything he might have said did not alert the committee to the fact that consideration of a previous complaint was inappropriate; anything he might have said did not have the effect of taking the complaint issue firmly off the table. Ms Szmidt and Ms Gallop believed Ms Gillipsie continued to rely on the complaint as a reason for her opposition. Given the contradictory testimony, and the passage of time, it is difficult to make a firm determination on the question of whether or not Ms Gillipsie continued to *discuss* the complaint in the committee deliberations. The evidence of Ms Szmidt and Ms Gallop, who had nothing to gain by their testimony, is more persuasive on this point than that of Mr. Lalonde, who, in my view, has exaggerated or misstated his role in the discussions. Even if Ms Gillipsie did not continue to refer to the complaint, or to suggest that Mr. Abouchar was a "complainer" and a "troublemaker", which both Ms Szmidt and Ms Gallop insist she did, I find that her very

intransigence is more consistent with a finding that the complaint continued to affect her opposition than otherwise, particularly given the limited pool of qualified candidates, and the fact that the competition was not for a permanent position. If supervisory experience was the only issue, it seems reasonable to expect that Ms Gillipsie would have agreed to give Mr. Abouchar a chance to prove himself in the job, particularly because the supervisory responsibilities were to be minimal in the first several months of the secondment.

Conclusion on Factual Issues

I conclude that the preponderance of the evidence supports a finding that the prior complaint continued to be one reason for Ms Gillipsie's refusal to endorse the majority candidate. (Whether this consideration of the complaint amounts in law to reprisal is discussed under the REPRISAL heading on page 53 below.) Further, I find that Mr. Lalonde did not take effective steps to ensure that the complaint was not a continuing factor in the selection process. He should reasonably have suspected that the complaint was still an issue. Based on his conduct, I find that it is more likely than not that he did appreciate this probability. If he believed the only issue for Ms Gillipsie was Mr. Abouchar's supervisory experience, it would have been logical for him to have distributed the job description to the committee so that they could all make an informed assessment based on the actual requirements of the job, which, as we have seen, did not involve supervision of staff to any great extent. He did not do so and he did not effectively caution the committee about the inappropriateness of considering the complaint. Further, Mr. Lalonde should have alerted Mr. Brown and other senior staff about the danger that consideration of the complaint would taint the committee's decision. Instead, he assured Mr. Brown that this was not the case and his minutes had the effect of obscuring the problem by misstating the extent of the support enjoyed by Mr. Abouchar. Given that Ms Gillipsie's opposition was tainted by consideration of the complaint, Mr. Lalonde should have recommended to Mr. Brown, and Mr. Brown should have recommended to the trustees, that the Metro Board hire the candidate who had the support of the rest of the interview committee, that is, Mr. Abouchar.

What happened instead is that Mr. Brown recommended to the Metro trustees that the competition be cancelled and the hiring of an assistant superintendent deferred until after the election of

CÉFCUT trustees in November 1988. Mr. Brown made the decision to recommend deferral on the advice of a senior group of school board personnel, in addition to Mr. Lalonde. He received the advice at a meeting held on June 14, 1988, to discuss the inability of the interview committee to bring forward a unanimously supported candidate. The Associate Director of the Toronto Board of Education, and Assistant Superintendent of Schools for the North York Board of Education attended the meeting, along with Ms Olsen and Mr. Lalonde. Ms Olsen could not recall any discussion of the fact that the complainant's previous human rights complaint had been raised. At the meeting, several options were discussed, including re-interviewing the candidates, with or without a new selection committee. It was the recommendation of the group that hiring be deferred if, after one more meeting, the current committee was unable to make a consensus decision. Brown testified that the staff at the June 14th meeting discussed the fact that this was a "delicate situation" and that it would be inappropriate for the Metro Board to make a decision that might impose an "unsatisfactory solution" on the new French-language board. Brown testified that it was agreed that CÉFCUT should make the hiring decision if there was a dispute because the person would become CÉFCUT staff after January 1989.

Ann Vanstone, as Chairperson of the Metro Board at the time, also gave evidence on this point. She testified that the role of Metro Board in 1988 was to facilitate the smooth start-up of the new Board. She noted that the French-language community was aware that the area boards had not initially supported a French-language board and that it was also well known that the French language community had not initially wanted its new Board to be appended to the Metro Board. In this context, she explained that "people felt that this [the competition dispute] was an issue for the French language community and they did not want to be involved any longer". Ms Vanstone stated that, given that "everyone in the French language community could not agree, it was not reasonable to impose a situation that might not meet the needs of the new Board". She also noted that timing played a role in cancellation of the competition. It was already June 14th when senior staff met to consider their recommendation to the trustees with respect to this competition. Selection competitions were not normally run in the summer and the area school boards did not operate actively over the summer period. This meant that a new competition could not be set up before September, adding weight to the suggestion that it be deferred until after the CÉFCUT

elections in November. She also noted in passing that the Metro trustees had financial reasons for not being particularly anxious to fill the position. The assistant superintendent would be hired out of Metro's budget, and it was not clear if Metro would be reimbursed for the expense.

This evidence of Mr. Brown and Ms Vanstone indicates two things. First of all, it is apparent that both sincerely, and perhaps understandably, believed that the Metro Board was being placed in the inappropriate position of having to take sides in what was seen as someone else's dispute. However, having agreed to take responsibility for running the job competition, it was the responsibility of the Board to ensure that the process was not tainted by considerations that infringed the rights of an applicant. The Board is responsible for the failure of its employee, Mr. Lalonde, to take steps to ensure the fairness of the process.

Secondly, the testimony of Mr. Brown and Ms Vanstone indicates that both were aware that the dispute on the committee might be about something more than the experiential qualifications of one of the candidates. Mr. Brown testified that he was aware, following the election of a slate of non-Franco-Ontarian candidates to the North York FLAC in 1986, that there were disputes within the French-language community on issues related to educational governance, and that to some extent the issues divided the community between Franco-Ontarians and "multiculturals". He testified that, with this in mind, he had discussed with Mr. Lalonde the need to ensure that recognition was given to community diversity in terms of programming and curriculum development for the new board. And he testified that Mr. Lalonde specifically reassured him that ethnic origin and place of origin were not factors in the disputed competition.

Whether or not Mr. Brown should have accepted Mr. Lalonde's reassurance on this point at the time, I have found that the evidence before me is more consistent with a finding that the competition was tainted by consideration of Mr. Abouchar's previous human rights complaint than with a finding of discrimination on the basis of place of origin. The evidence established that there were many factors other than discrimination on the basis of place of origin, that contributed to the divisions within the French-language community at this time. The evidence suggested that there could have been, and were, valid differences of opinion on strategic political and policy

questions facing the francophone community. Reasonable and fair-minded people can disagree on these issues without being racist and without discriminating on the basis of ethnic origin or place of origin.

However, seen in this context, the significance of Mr. Abouchar's previous human rights complaint is more apparent. Mr. Abouchar's previous complaint against the North York Board alleged employment discrimination on the basis of place of origin, race and ethnic origin because he was not a Franco-Ontarian. The evidence was that the complaint was discussed in the selection process as an indication that Mr. Abouchar was a "troublemaker", not someone who deals well with disputes, someone who "splits the community". This latter comment, attributed to Ms Gillipsie, may be a reference to Mr. Abouchar's role in establishing AMFO. While I find that there was not sufficient evidence to support a finding of discrimination on the basis of association, this comment does suggest that Mr. Abouchar may have been criticized within the francophone community because of disagreements over strategic and ideological issues in what was described as an on-going struggle against assimilation by the dominant anglophone culture. In the context of these disputes, which were the subject of considerable testimony in respect of the CÉFCUT complaint, it is unfortunately not surprising that consideration of Mr. Abouchar's previous human rights complaint became a factor in the job competition.

The Consensus Issue

Before turning to the CÉFCUT complaint, I will deal briefly with the so-called consensus issue because so much importance was placed on it by both counsel. Counsel for the Commission argued strenuously that a requirement for unanimous consensus was imposed on the interview committee by Mr. Lalonde part way through the process as a means of ensuring that the opposition of Ms. Gillipsie was fatal to Mr. Abouchar's application. Counsel for Metro Board, on the other hand, maintained that the committee had agreed at the outset to decide by consensus, and that the failure to reach consensus was the only reason why the competition was cancelled. Counsel for the Commission argued that Mr. Lalonde's testimony and minutes on this issue were false. Counsel for the Metro Board submitted that the evidence of Ms Szmids and Ms Gallop on the consensus requirement was not reliable. I was not persuaded by the submissions

of either counsel. In my view, the evidence suggests that there was a genuine misunderstanding by members of the interview committee as to the process to be followed in recommending a candidate to Metro Board.

Mr. Lalonde and Ms Gillipsie apparently went into the competition expecting that the committee would make its recommendation by consensus. This was the practice followed by the Metro Board in hiring staff. Moreover, the Task Force had itself adopted an "informal consensus" approach to decision-making at one of its first meetings on February 5, 1987. This made sense for the Task Force because it was composed of representatives of various divergent interests. The recommendations of the Task Force would only be implemented if the various represented stakeholders bought into the process, and went back to their constituencies endorsing the recommendations. By making decisions on the basis of compromise and consensus, the Task Force could achieve the broadest possible support for its recommendations. From the point of view of the Metro Board, which housed and staffed the Task Force, broad support for the recommendations ensured smooth implementation of Bill 75.

However, some members of the committee apparently did not expect consensus to be the process followed by the committee. Ms Gallop noted in her testimony that there were two members of the interview committee who did not have previous Task Force experience and who were unlikely to have expected a consensual decision-making process: Marie Carmel Boutin and Marc Duez. Ms Szmidt and Ms Gallop both testified that they been involved in hiring committees in the past but had never been on a committee that operated on a consensus model. They were genuinely taken aback by Mr. Lalonde's position that the committee had to achieve unanimity even in the face of apparent intransigence on the part of one member. I accept their evidence that there was no discussion of the decision-making process before the interviews, and no common understanding that a unanimous recommendation would be required. Ms Gillipsie testified that Mr. Lalonde gave a detailed explanation of how the candidate would be chosen by consensus, but Mr. Lalonde himself could not recall that he had done so. Ms Gillipsie may simply have recalled a discussion from one of the other job competitions being run at the same time. I find that her testimony on this point is not reliable; it is not supported by Mr. Lalonde and is inconsistent with the

evidence establishing that more than one heated discussion took place after the interviews on the question of whether unanimous consensus was agreed to in advance. I also note that, while the evidence of Mr. Brown and Ms Vanstone established that hiring by consensus was a standard practice at the Metro Board, there was no evidence to suggest that it was a universal practice at school boards at the time. CÉFCUT hired by majority vote in the competition for the same position that is the subject of the second complaint.

The actual process used at Task Force meetings to achieve consensus was described by several witnesses, and was not in dispute. If a member of the Task Force was in a minority position on an issue, that person would either set aside his or her differences or look for a compromise that would be acceptable to the interests which he or she represented. The Task Force as a whole would try to make suitable modifications to accommodate the concerns of the person outvoted. If the person in the minority position was satisfied that their interests could or would be accommodated, the decision was simply recorded as unanimous. In view of this practice, Ms Gillipsie's apparent unwillingness to make an effort to support the majority recommendation was seen as suspect by Ms Szmidt and Ms Gallop.

In these circumstances, it is understandable that Ms Szmidt and Ms Gallop focussed, both at the time and at the hearing, on the so-called consensus issue. The fact that they raised the unanimity requirement in a subsequent Task Force meeting corroborates their evidence that the process was not discussed in advance. Whether appropriately or not, they felt manipulated by the process. Ms Gallop said she wondered why she had volunteered more than a year of her time to the Task Force if her input was valued so little. Ms Szmidt had a similar reaction. In my view, this response reinforces their credibility. Their difficulty with the process was not because they were, as was suggested, biased or partisan in their support of Mr. Abouchar. Although they testified that they thought consideration of the human rights complaint was inappropriate, they may or may not have realized that consideration of a complaint could itself be an infringement of the *Code*. In any event, what Ms Szmidt and Ms Gallop were really angry about at the time was not the fact that the complaint had been discussed by the interview committee, but rather the fact that they

felt badly treated by the process. That was their issue, and it is not an issue on which I am required to make a determination.

The CÉFCUT Complaint

The job competition at issue in the second complaint is for a seconded position as Assistant Superintendent, French-Language Programs, for CÉFCUT. The term of the secondment was to run from January 1, 1989 to December 31, 1989. The advertisement for the position is virtually identical to the one used in the first competition run by the Metro Board; the listed qualifications are exactly the same. Although there was some dispute as to whether secondary experience was still considered a preference in the second competition, it was still listed as such in the advertisement, along with the same preference for candidates with experience in an “urban French-language minority environment” as was indicated in the earlier advertisement. The second competition was CÉFCUT’s effort to fill the position that was left vacant after the Metro Board competition was cancelled.

The Interview and Selection Process

Alfred Abouchar was one of five applicants who responded to the advertisement. The CÉFCUT trustees decided to interview all of the applicants, but one withdrew before the interviews. André Lalonde, as the recently appointed Director of Education for CÉFCUT, recommended that an interview committee be composed of the Chair (Anne Ladouceur), the Vice-Chair (Danielle Joly), and himself. Ms Joly declined to sit on the committee as she had been on the North York FLAC when Mr. Abouchar had filed his human rights complaint against the Board of Education. Instead, the trustees determined that the committee would be composed of Anne Ladouceur, Clay Derstine, Paul D’Aoust and Antoine DeRose, as well as Mr. Lalonde. Ms. Ladouceur chaired the selection committee.

The remaining four applicants were interviewed on December 16 and 17, 1988. The interview committee met on the morning of the first interviews to approve a set of questions and a process for the interviews. All the questions but one were developed prior to the interviews, and were asked in the same order by the same person in each interview. When Mr. Derstine asked an

impromptu question in the first interview, it was added to the list of questions asked of every applicant. The committee agreed to a 45-minute interview period, in accordance with the schedule already set. It was also agreed that the selection decision would be made by majority vote. The committee members initialled their approval of the process prior to commencing the first interview.

Ms Ladouceur testified that extra care was taken to ensure that the committee agreed to the process, and that it was seen to be fair, because the committee was aware that one of the applicants, Mr. Abouchar, was the spouse of one of their fellow trustees. In addition, the evidence established that all members of the committee were aware of Mr. Abouchar's complaint against the North York Board of Education, and were to some extent aware of his dissatisfaction with the earlier competition for the same position. This was cited by respondent witnesses as a second reason for ensuring that the interview process was transparently fair.

Recommendation of the Interview Committee

After the interviews, three of the five committee members (Ladouceur, Lalonde and Derstine) announced their support for Francine Morrisette, who was described in evidence as a Franco-Ontarian. Paul D'Aoust gave his 'first place' vote to another candidate, not Mr. Abouchar, but agreed to support Ms Morrisette who had been his second choice. Only Mr. DeRose gave his first vote to Mr. Abouchar and refused to transfer his support to Ms Morrisette. All of the committee members, including Mr. DeRose, testified that they were impressed by Ms Morrisette's supervisory and managerial experience, particularly her 14 years as a principal. The committee recommended, with Mr. DeRose dissenting, that Ms Morrisette be offered the position. The recommendation was accepted by the full board.

Performance of the Complainant in the Interview

All of the members of the committee testified that Mr. Abouchar did not perform well in the interview. This was in direct contrast with the evidence concerning his interview performance in the first competition. He appeared ill at ease; had difficulty answering the questions in a focussed and concise way; ran out of time to address the issues he wanted to highlight; and at the

end of the 45 minutes, was interrupted and told twice that his interview was over. Several committee members, including Mr. DeRose, testified that he seemed to lecture the committee, and elaborate on his own ideas, rather than answering the questions put to him. Ms Ladouceur testified that this made her question his flexibility, his willingness to take direction from the trustees, and his ability to work in a team.

Mr. Abouchar acknowledged that he was ill at ease during the interview. He testified that he felt several members of the committee were pre-disposed against his application. In particular, he testified that Ms. Ladouceur had told him, after his unsuccessful bid for Mr. Lalonde's interim position as Superintendent in 1987, that he should step aside and allow Franco-Ontarians to take the leadership roles with the new school board for which they had fought so hard. He testified that he also did not trust Mr. Lalonde because of his participation in the Metro Board competition and further, that he had a previous dispute with Mr. D'Aoust in relation to an application to the Canadian Radio and Telecommunications Commission ("CRTC") for a French language community radio station.

Support for the Complainant Before the Interview

Two members of the interview committee testified that, prior to the interview, they were pre-disposed to support Mr. Abouchar's candidacy. Mr. Derstine testified that he considered Mr. Abouchar an excellent candidate, and valued his active involvement in the francophone multicultural community. It was his evidence that 60 to 70 percent of the student population in CÉFCUT schools was non-Franco-Ontarian, but that the "directorship was always Franco-Ontarian". Mr. Derstine testified that he believed that Mr. Abouchar would be "able to reflect the needs and aspirations of the majority community in our schools, and unfortunately the Franco-Ontarians wouldn't." When asked who would not be happy with Mr. Abouchar in the position, he testified that it would be the "Franco-Ontarian community. The people who had been fighting for their language, their rights to a school".

Mr. Derstine's testimony was that, going into the competition, he believed that "the fix was in" against Mr. Abouchar because of "who was on the committee". He testified that he did not think

Mr. Abouchar would be successful because he believed the other trustees on the committee, with the exception of Mr. DeRose, would not support a non-Franco-Ontarian. He also believed that Mr. Lalonde did not favour Mr. Abouchar's candidacy. Although Mr. Derstine felt that Mr. Lalonde and Mr. Abouchar would make a good team eventually, he believed that there would be tension between them at first, and that this could damage the start-up of the new board. He testified that the tension would arise in part because Mr. Abouchar was seen as representing the multicultural community already in the schools, and Mr. Lalonde was focussed on recruiting Franco-Ontarian students out of the separate and English school systems. Attempting to place the tensions in some kind of context, Mr. Derstine testified that the "whole of Ontario was aware of a tug between the new French and the old French".

Mr. Derstine testified that he went into the competition thinking that he would support Mr. Abouchar unless another candidate impressed him. Mr. Derstine acknowledged that Mr. Abouchar did not perform well in the interview. He believed that this was because "he felt shafted". In the end, Ms. Morrisette was Mr. Derstine's first choice. The first place ranking reflected Mr. Derstine's conclusion that she would work well with Mr. Lalonde, and had a relaxed manner that would be helpful given the pressures expected during the start-up period. Like all the witnesses, Mr. Derstine emphasized that the trustees felt that the new board would be under intense pressure in the first year of operation to prove that it could meet the standard of excellence expected by parents and teachers. In his view, the board needed staff to be able to work together smoothly, and Ms. Morrisette appeared to be someone who could work well with Mr. Lalonde and "take his direction". Mr. Derstine testified that he felt that there was no point in voting for Mr. Abouchar given his assumptions about how the other members of the committee would vote.

The second committee member who acknowledged being predisposed to support Mr. Abouchar was Antoine DeRose. Mr. DeRose testified that he tried to "make the case" for Mr. Abouchar because he believed an "ethnocultural" should get the position and that Mr. Lalonde "already represented Franco-Ontarians at the new board". He testified that the other committee members argued that Mr. Abouchar had the least supervisory and management experience of the four

candidates. He testified that he recognized the value of Ms Morrisette's experience, but responded to the committee by suggesting that requiring experience was a way of eliminating "ethnocultural" candidates because "they could not get the experience".

Mr. DeRose gave some extraordinary testimony which the Commission urged me to reject as utterly lacking credibility. Mr. DeRose testified that, on the evening before the interviews, he attended at Mr. Abouchar's home to strategize about how to best promote Mr. Abouchar's candidacy. He testified that he and Mr. Abouchar reviewed and discussed the resumes of the other candidates, and that Mr. Abouchar suggested to him critical comments that could be made about the qualifications of at least one other candidate.

The Commission urged me to reject Mr. DeRose's testimony, and even questioned the good faith of CÉFCUT in relying on his evidence. In attacking Mr. DeRose's credibility, counsel for the Commission relied primarily on the following circumstances:

- * the fact that he did not tell the investigating human rights officer of his visit to the Abouchar home;
- * the fact that he could remember few details of either the discussion the night before the interviews or the interview process itself;
- * the fact that he could remember few details of the subsequent May 1989 competition for the permanent position;
- * the fact that he testified that he advised the complainant about the withdrawal of one candidate, when that fact was not likely known to him that evening;
- * the fact that he had a subsequent dispute over his re-election in which he was opposed by Simone Abouchar;
- * the fact that he had a subsequent disagreement with the complainant over the leadership of AMFO; and
- * the fact that he was, at the time of his testimony, employed by CÉFCUT on a contractual basis.

I did not find the Commission's submissions on Mr. DeRose's credibility to be persuasive. Mr. DeRose acknowledged his disputes with Mr. and Mrs. Abouchar, but maintained that he was telling the truth in giving his evidence. He explained that he had little recollection of the interviews precisely because, from the outset, he had no intention of supporting anyone other than Mr. Abouchar, regardless of how well he or anyone else performed in the interviews. It is not surprising, in my view, that he can remember few details of the May competition or of his evening discussion with Mr. Abouchar nine years prior to his testimony. Further, there is no firm evidence one way or the other as to whether he could have known about the withdrawal of one candidate, and it may be that he was simply wrong in recalling that it was discussed with Mr. Abouchar. Neither is it, unfortunately, surprising that he did not tell the whole story to the investigating human rights officer. Certainly the evening meeting was entirely improper, and as Mr. DeRose noted, if information about the meeting was widely known, it might have effected his prospects for re-election as trustee.

Mr. DeRose defended his actions by noting that, at the time, he considered Mr. Abouchar to be his friend and believed that it was appropriate and right that a visible minority francophone like Mr. Abouchar get the position. He defended his credibility by saying that he was not prepared to give untruthful testimony. I found his version of events, and his manner in giving evidence, to be credible. In admitting to the improper meeting with Mr. Abouchar, Mr. DeRose put his own integrity into question. I cannot think that any personal or political falling-out with Mr. Abouchar or his wife would be of such importance to Mr. DeRose that he would risk his own reputation in order to, as Commission counsel put it, "settle old scores".

Accordingly, I find that the meeting between Mr. Abouchar and Mr. DeRose did take place the evening before the interviews. In meeting with, and coaching, a member of the selection committee, Mr. Abouchar showed an extreme lack of judgement, as well as disregard for the integrity and fairness of the process. The fact that such a meeting took place is also further evidence of the extent to which the community was perceived to be split between Franco-Ontarians and immigrant francophones. Mr. Derstine went into the interviews with a firm view that the Franco-Ontarians on the committee would not support Mr. Abouchar. Mr. DeRose was

so concerned about visible minority representation among senior school board staff that he had a completely inappropriate meeting with Mr. Abouchar the night before the interview.

However, the issue before me is not the conduct of Mr. DeRose and Mr. Abouchar, nor is it simply whether or not Mr. Derstine believed other trustees were biased. The issue is whether or not the complainant's rights under the *Code* were infringed on the basis of race, ethnic origin, place of origin, or association, or because he had filed a previous human rights complaint. In assessing the evidence relied upon by the Commission to support an inference of discrimination, it will be helpful to first consider two questions.

- * Was the complainant treated fairly in the competition process?
- * Was the complainant qualified for the position, and if so, was he the best qualified?

Fairness of the Selection Process

CÉFCUT, in its final submissions, acknowledged that the competition process was "imperfect". Some aspects of the process which can be criticized are described below.

- * The committee did not identify in advance an agreed set of criteria for the position. Assuming the committee accepted as appropriate the "qualifications" listed in the job advertisement, there was no discussion or agreement as to content or relative importance of each requirement. Ms Ladouceur doubted if the committee members had a consistent view of what the appropriate criteria were.
- * The job advertisement stated that preference would be given to candidates with experience at the secondary school level, whereas in fact no such preference was applied. Ms Ladouceur stated she thought experience at the elementary level was more important because of the greater number of elementary schools and the need to bring students into the system at that level.
- * The detailed job description was not made available to the interview committee. With the exception of Mr. Lalonde, all committee members were new trustees with limited experience and familiarity with the position of school board superintendent. Ms Ladouceur acknowledged that the committee had not discussed what the responsibilities of the job might be

and that they did not recruit with reference to set of job tasks or requirements. She testified that she "had no idea of specifics".

- * There was no common understanding in advance of the interview as to what the range of appropriate answers would be for any of the interview questions. In fact, in the case of one question, it appeared that committee members had opposite ideas as to what the appropriate answer might be. Ms Ladouceur acknowledged that the answers given in the interviews were not evaluated against any standard or against each other, and that she had no idea if there was consistency in what the committee members were looking for in answers.
- * There was no discussion or agreement in advance as to the relative importance of the various questions asked in the interview. (ie. Were the questions of roughly equal importance or not?)

Adrian Johnston, testifying as an expert in bias-free recruitment, acknowledged in cross-examination that even a perfect selection process cannot ensure that discrimination does not taint a decision, and further, that a non-discriminatory result can follow from even the most flawed selection process. I accept his evidence. A competition process based on measurable criteria, agreed to in advance and tied to actual job responsibilities, will minimize the opportunity for bias to influence the selection of a candidate. The fact that the CÉFCUT competition left considerable room for improvement, is relevant in that it may have made it easier for the process to be tainted by any biases held by the members of the interview committee.

Mr. Abouchar testified that he did not believe he was treated fairly in the competition process. As we have seen, he believed that three members of the committee were opposed to his application. Mr. Abouchar was aware from gossip in the community that he had enjoyed significant support in the first competition, and he believed that Mr. Lalonde had opposed his candidacy. In the case of Mr. D'Aoust, he believed that he would not support him because of their earlier dispute over the CRTC application. Mr. Abouchar testified that he also believed Ms Ladouceur was against him, based on the meeting that she had with him after the 1987 job competition for Mr. Lalonde's position. I find that, although Ms Ladouceur was unaware of Mr. Abouchar's view of their earlier conversation, both Mr. Lalonde and Mr. D'Aoust realized

that Mr. Abouchar would feel disadvantaged by their participation and should have made this known to the other trustees at the same time as Ms Joly withdrew from the competition.

Was it inappropriate for Mr. Lalonde and Mr. D'Aoust to sit on the selection committee? Mr. Lalonde was to be the direct supervisor of the successful candidate, and for that reason was arguably a necessary part of the interview team. However, Mr. Lalonde acknowledged that, as senior CÉFCUT staffperson, he participated in many selection committees over the years, but always as a non-voting member after the first few competitions. It certainly would have been preferable if Mr. Lalonde had been a non-voting member of the team in this competition, and if he had been introduced as such to Mr. Abouchar, and to all the candidates.

I am also of the view that Mr. D'Aoust should have declined to participate in the selection process. Mr. D'Aoust acknowledged in his testimony that he had an unfavourable view of Mr. Abouchar going into the competition. Further, the evidence indicated that the dispute about the CRTC application involved, at least in part, an issue about the diversity of the community making the application and about how the two key community organizations (ACFO and AMFO) were to be described in the application. The evidence of Mr. Derstine and Ms Lilya Prim-Chorney suggests that Mr. D'Aoust and Mr. Abouchar were on opposite sides of the community divisions over questions such as: what organization should speak for the francophone community; what organization should be funded to represent the community; what organization could appropriately lobby government on behalf the community. Given their apparent polarity of these issues, and Mr. D'Aoust's acknowledged low regard for Mr. Abouchar, his participation in the interview understandably affected Mr. Abouchar's performance. There were two other trustees, besides Simone Abouchar and Danielle Joly, who could have taken the place of Mr. D'Aoust on the interview committee. It would have been fairer to Mr. Abouchar if one or both of these other two trustees had participated in the selection process instead of Mr. D'Aoust.

In my view, CÉFCUT failed to afford Mr. Abouchar a selection process that was fair in all the circumstances. I accept Mr. Derstine's evidence that the community tensions were just below the surface at trustee meetings, and that everyone would have had some awareness of how the

composition of the selection committee reflected the divisions in the community. All the trustees were also aware of Mr. Abouchar's prior human rights complaint and that he was considering legal action in respect of the Metro Board competition. In this situation, a real effort should have been made to put together a rigorous process and an interview committee with which all candidates would be comfortable. I accept the Commissions's submission that it would have been useful to hire a consultant or to bring in a senior staff person from another school board to participate in the interviews. Although Ms Ladouceur testified the CÉFCUT trustees felt the need to show that the new board could act quickly and independently, it is now apparent that it would have been wiser to have taken greater care in setting up both the selection team and the competition process in the first place.

However, in assessing the fairness of the selection process, it is incumbent on me to note the impact of Mr. Abouchar's own conduct. By meeting with Mr DeRose and reviewing the resumes of the other candidates, Mr. Abouchar gave himself an unfair advantage. Mr. DeRose acknowledged this fact in his evidence. Mr. DeRose testified that, when Mr. Abouchar asked him to file a "minority report" after the competition, stating that he had been "victimized because of his race", he declined to do so because he believed Mr. Abouchar had already been given an "extra opportunity" because of the help he gave him before the interview. Mr. DeRose also testified that he did not think that Mr. Abouchar had been disadvantaged by race in the competition, but that he respected his feelings of victimization.

Qualification for the Position

CÉFCUT did not dispute that Mr. Abouchar had the basic qualifications for the position. However, the school board relied on the evidence of Dr. Leithwood which established that prior experience as a vice-principal, principal or supervisory officer would be part of the usual career path for an assistant superintendent. The evidence of all the members of the selection committee established that, in this competition, significant importance was placed on the supervisory and management experience of the candidates because the school board would be operational in just

two weeks. There was a strong perception at the time that parents and teachers in the existing schools were nervous about the new school board: about academic standards, limited resources, teacher job security and pensions, disorganization, and a myriad of issues associated with start-up. Ms Ladouceur testified that the trustees shared a real fear that parents and teachers would abandon the schools. Mr. Derstine described the start-up situation as “crazy”. In terms of the job competition, this translated into more emphasis on demonstrated experience, particularly direct supervisory experience as a principal, vice-principal or acting superintendent. Two trustees testified that they were looking for someone who could “hit the ground running”. Ms Ladouceur testified that she was particularly looking for someone who had the ability to reassure parents and teachers.

I will not repeat my assessment of Mr. Abouchar’s qualifications as set out above in relation to the Metro Board complaint. Obviously his qualifications had not changed from June to September, and neither had the listed qualifications for the position or the limited pool of eligible applicants. What had changed was the emphasis placed on the requirement in the job posting for “extensive and varied academic and supervisory officer experience”, as well as, to some extent, the actual day-to-day responsibilities of the position. Mr. Lalonde testified that curriculum and policy development would not be as significant a component of the job, as some of that work had been done by others in the period between the two competitions. Supervision of school staff, on the other hand, would be a significant responsibility for the new assistant superintendent. As of January 1, 1989, CÉFCUT would take over five schools with 200 staff, including 115 teachers. The Assistant Superintendent would be responsible for the direct supervision of five principals and for the joint supervision of the teachers. In addition, the assistant superintendent would hire and supervise three consultants working out of the school board offices.

The evidence established that all but one committee member concluded that, although Mr. Abouchar was qualified for the position, Ms Morrisette was more qualified. This was a reasonable assessment, and was based on her 14 years experience as a principal and her

experience as an acting superintendent during her 7 years as an education officer with the Ministry. The Committee concluded that Ms Morrisette's experience would give her, and the new school board, more credibility with the various constituencies involved in start-up: principals, teachers, area board superintendents, and parents. Although I have no doubt that Mr. Abouchar was qualified, and had many valuable skills and abilities which would have been very helpful for the new school board, the evidence is clear that Ms Morrisette had better experiential credentials and that this was foremost in the minds of the committee members who voted for her. Supervisory experience was a legitimate qualifying factor, based on the actual job responsibilities, and it was a decisive factor in her success in the competition.

Direct Discrimination

This brings us to the central issue with respect to both the selection process and the selection decision. Having determined that the *selection process* was both flawed and not fair to Mr. Abouchar, it remains to be decided if the unfairness in the process was attributable to a prohibited ground under the *Code*. Secondly, given the finding that the committee relied on Mr. Abouchar's relative lack of supervisory experience in preferring another candidate, we must still consider if the *selection decision* was tainted by any considerations that infringed the rights of the complainant. It was the position of the Commission that an inference of discrimination could be drawn based on evidence that the three Franco-Ontarian members of the interview committee were predisposed to discriminate against the complainant as a non-Franco-Ontarian. The Commission listed the conduct or comments relied upon in respect of each of the three as set out below.

Anne Ladouceur

- (a) The evidence of Lilya Prim-Chorney that Anne Ladouceur told her that she did not want "foreigners" obtaining senior positions in the new school board, no matter how qualified they were;

- (b) The evidence of Marie-Paul Gallop that, in the context of a discussion about declining enrollment, Anne Ladouceur said that it was worthwhile to have the new school board even if only one Franco-Ontarian child was served;
- (c) The evidence of Alfred Abouchar that after the 1987 competition that Anne Ladouceur told him that Franco-Ontarians had fought so long for their own school board, they could not appoint an Arab like himself to a senior position, and that he should step aside and wait for his time to come;
- (d) The references in Ms Ladouceur's evidence to her opinion that the francophones had been "colonized" by the anglophone school boards, implying (in the Commission's submission) that only Franco-Ontarians like herself were now fit to serve in senior positions;
- (e) The evidence of Clay Derstine (a French-speaking non-Franco-Ontarian) that Anne Ladouceur refused to recognize him as a francophone, and referred to him and his son as "francophiles";
- (f) Ms Ladouceur's statement to the human rights officer and to the tribunal that she thought the complainant might not get along with women because of his apparent failure to look at her during the interview;
- (g) Her evidence that, contrary to the qualifications advertised in the job posting, she was applying a preference for applicants with experience in the elementary panel and not the secondary panel, in which Mr. Abouchar had experience;
- (h) Her instruction to the panel members to destroy their notes;
- (i) The manner in which she cut off Mr. Abouchar's interview in mid-sentence, described by the Commission as "rude";
- (j) The evidence of Clay Derstine that she insisted on a rigid selection procedure for the stated reason that "Abouchar

will probably appeal and we have to make it appear that everyone got equal treatment”;

- (k) The evidence of Clay Derstine that he knew in advance that Anne Ladouceur would not support hiring the complainant.

Paul D'Aoust

- (a) The fact that his father was a member of *La Patente*, a Franco-Ontarian society which Lilya Prim-Chorney compared to the Klu Klux Klan;
- (b) Paul D'Aoust's own evidence that he had an unfavourable opinion of Alfred Abouchar going into the competition because of a dispute over an application to the CRTC for a French language radio station;
- (c) The evidence of the complainant that the dispute over the CRTC application was a clash over multiculturalism;
- (d) The evidence of Clay Derstine that Paul D'Aoust was very involved in the Franco-Ontarian community and that he expected him to support only a Franco-Ontarian;
- (e) The evidence of Lilya Prim-Chorney that she had a discussion with Paul D'Aoust about school curriculum in which he said he did not see how multiculturalism was relevant in “our schools”.

André Lalonde

- (a) The evidence of Marie-Paul Gallop that he said that immigrant francophones like herself were “riding on the coat-tails” of Franco-Ontarians;
- (b) His failure to disqualify Claudette Gillipsie's vote in the first competition after she raised the issue of the previous human rights complaint;

- (c) The evidence of Ms Gallop that he reminded the committee in the first competition of Mr. Abouchar's previous complaint when he changed his vote to support him;
- (d) The imposition of the unanimity requirement in the first competition;
- (e) The evidence of Ms Gallop and Ms Szmidt that the minutes and reports prepared by Mr. Lalonde in relation to the first competition were misleading;
- (f) Mr. Lalonde's own evidence that he disagreed with what he perceived to be AMFO's promotion of bilingualism in the school system.
- (g) The fact that he did not share the job description for the position with the committee;
- (h) The evidence that he initially recommended that the interview committee in the second competition be made up of only three people, all of whom, the Commission suggested, could be presumed to have a bias against the complainant;

In responding to the Commission's submissions, I will begin with Mr. Lalonde. I note that the evidence noted in paragraphs (a) through (e) above, has already been dealt with in the analysis of the first competition. Although this evidence does suggest that Mr. Lalonde did not support Mr. Abouchar's candidacy, I did not find there to be a sufficient basis for an inference that discrimination on the basis of race, ethnic origin or place of origin tainted his conduct. I found that the more probable inference was that Mr. Abouchar's lack of success in the first competition was attributable at least in part to the inappropriate consideration of his previous human rights complaint. I also found that Mr. Lalonde did not take appropriate steps to prevent the complaint from affecting the outcome of the competition.

With respect to the evidence that Mr. Lalonde did not agree with the real or perceived views of AMFO, an organization founded by Mr. Abouchar, I note that this point is not disputed. Mr. Lalonde testified that he believed that AMFO favoured a bilingual education option. This was apparently also the position of many parents of children in the secondary French-language system, and was an area of contention. Mr. Lalonde testified that studies conducted by the Ontario Institute for Studies in Education had shown that there to be an alarmingly high drop-out rate for francophone secondary students in bilingual programs. He testified that he found this aspect of AMFO's mandate problematic.

It was agreed on all sides that ACFO purported to represent all francophones in Ontario, including immigrants and multiculturals, but that many immigrant francophones did not believe that ACFO adequately represented issues important to them. I accept the evidence of several witnesses that AMFO as an organization was seen as threatening to ACFO by at least some of those within the Franco-Ontarian community who were active in ACFO. Mr. Lalonde testified that he questioned the necessity for a separate organization to represent the interests of non-Franco-Ontarian francophones, believing that an integrated organization with a "group within a group" was the preferable approach.

Taken as a whole, this evidence demonstrates that there were indeed disagreements between Mr. Lalonde and Mr. Abouchar on more than one issue facing the French-language community. However, the disagreements can be characterized as political and strategic. The fact that Mr. Lalonde did not endorse AMFO's mandate, or at least what he knew of the mandate, does not support an inference of a discriminatory attitude against Mr. Abouchar on the basis of race, ethnic origin or place or origin.

The failure of Mr. Lalonde to share the job description with the second selection committee has already been discussed as one of several difficulties with the CÉFCUT process. This failure was not explained. Several committee members testified that they were relying on Mr. Lalonde's knowledge of the position to assist them in assessing the candidates. Certainly if Mr. Lalonde had provided

copies of the job description to the committee, they were have been better able to assess the candidates independently of Mr. Lalonde's assessment. I find the failure to share the job description troubling, but not, on its own, evidence of a discriminatory bias on the part of Mr. Lalonde.

The fact that Mr. Lalonde suggested a first selection committee composed of himself, Anne Ladouceur and Danielle Joly also raises some concerns. Ms Joly had been of the North York FLAC at the time Mr. Abouchar filed his complaint against that board, and she declined to participate on the basis that it would be inappropriate. Although Mr. Lalonde testified that he was just following the Metro Board practice in recommending that the CÉFCUT interview committee be composed of the Chair and Vice-Chair, there is no doubt that he would have known of Ms. Joly's potential conflict. Mr. Derstine testified that he was immediately aware that the committee as initially proposed would not be representative, and for that reason put his name forward and supported the addition of Mr. DeRose. In view of all of the evidence about the split in the community, I accept the submissions of the Commission that the committee as initially proposed by Mr. Lalonde could be seen to be stacked against Mr. Abouchar. I will return to this evidence.

Turning to the Commission's submissions with respect to Mr. D'Aoust, it is clear that I cannot infer a discriminatory bias on the basis of his father's membership in La Patente. He testified that he was not even aware of this fact until after he was elected to CÉFCUT. Further, on the issue of his unfavourable view of Mr. Abouchar after the CRTC dispute, I note that he explained that this was because he believed that Mr. Abouchar had made last minute unilateral changes to a joint submission. I found this evidence to be credible because of Mr. D'Aoust's testimony that he was so angry about the changes that he restored the original wording by marking up the official copy submitted to the CRTC. However, I acknowledge that Mr. D'Aoust's anger about the unilateral changes may have been motivated by intolerance of multiculturalism, as was suggested by the Commission, but that I can make no firm findings in the absence of further evidence, such as a copy of the final submission.

In this regard, I also note Mr. D'Aoust's evidence that he did not oppose AMFO as an organization established to represent the particular interests of the multicultural francophone community. He testified that he believed it was appropriate for the multicultural francophone community to have a separate voice, although he shared Mr. Lalonde's view that it was preferable if it was a committee within ACFO or co-ordinated with ACFO. Given that Mr. D'Aoust was himself very active in the leadership of ACFO, it is possible that this view was in part a reflection of his own small "p" political goals.

This leaves the evidence of Mr. Derstine and Ms Prim-Chorney to be considered in respect of Mr. D'Aoust. I found Mr. Derstine to be very credible witness. He testified in a careful and thoughtful way. More importantly, Mr. Derstine, who testified early in the proceedings, gave me useful evidence about the community disputes which form the background for this complaint and this evidence was corroborated, bit by bit, by many of the other witnesses, including Mr. Brown, Ms. Vanstone, Mr. Lalonde, Mr. D'Aoust. Mr. Derstine testified that he knew going into the competition that Mr. D'Aoust, as well as Mr. Lalonde and Ms Ladouceur, would not hire Mr. Abouchar, a non-Franco-Ontarian. Even if Mr. D'Aoust's remark to Ms Prim-Chorney is discounted as a thoughtless aside, I find Mr. Derstine's evidence persuasive.

Turning to the Commission's submissions with respect to Anne Ladouceur, I note that paragraphs (a) through (f) relate to evidence of statements made by Ms Ladouceur which suggest a discriminatory bias, and paragraphs (g) through (j) deal primarily with her conduct as chairperson of the selection committee. Beginning with paragraphs (a) and (b), Ms. Ladouceur's evidence was that her remarks to Ms Prim-Chorney and Ms Gallop had been misunderstood: she would not have used the word "foreigner", and she was not excluding immigrant francophones when she used the term "Franco-Ontarian".

With respect to the allegations in paragraph (c), Ms Ladouceur acknowledged talking to Mr. Abouchar after the 1987 competition about "his feeling of being discriminated at North York, having

been overlooked for positions, at various positions at different times". She testified that they discussed systemic discrimination but also that "every time Mr. Abouchar didn't get a job, it wasn't because of who or what he was." She denied making any reference to his racial background or suggesting that immigrants should not take senior school board positions. Similarly, she could not recall referring to Mr. Derstine as a "francophile", although she was equivocal when asked if she considered Mr. Derstine to be a "Franco-Ontarian", saying that she really thought of him as a fellow New Democratic Party supporter, and that she had supported him as a trustee because of his commitment to French-language education. At one point in her evidence, she stated that as far as she was concerned anyone in Ontario who was fluent in the French-language was a Franco-Ontarian.

While I accept Ms Ladouceur's testimony on several points, I did not find her evidence in this area altogether convincing. I acknowledge that there may have been misunderstandings based on her use of language, but her own evidence (including her use of the phrase "Section 23 francophone"), suggested that she was in the habit of making distinctions on the basis of whether or not a person's first language was French, or on the basis of whether or not a person was part of the historical French-language community in the province. However, I do accept her evidence that she did not refer to Mr. Abouchar's racial background in the 1987 discussion: her evidence on the conversation with Mr. Abouchar contained convincing detail, whereas Mr. Abouchar's evidence was not as clear or specific as was suggested by the Commission.

Ms Ladouceur was most credible in testifying about the assimilation or colonization of the historical French language community in Ontario and about her disappointment that she could not educate her own daughter in a French-language public school. She acknowledged that a primary motivation for her activism on French first-language education was to provide a forum for children, like her daughter, who not had the opportunity to be educated in French and were in danger of losing their heritage as a Franco-Ontarian "de naissance". While this is of course entirely appropriate and commendable, her testimony as a whole suggested to me that she was not sensitive to how her

emphasis on this issue could be seen, and was seen as, negating or minimizing the importance of including all francophone communities in the new initiative.

I also find that Ms Ladouceur may have drawn on a racial stereotype when she speculated in her interview with the Commission's investigating officer that Mr. Abouchar's apparent failure to look her in the eyes in the interview, and to listen to her instructions, may have been attributable to an unwillingness to take directions from women. She testified that she might have speculated about this in answer to a question from the officer, and that his failure to look at her in the 1988 interview was in direct contrast to his conduct in the 1987 interview for Lalonde's position. In her interview with the officer, and in her testimony, Ms Ladouceur also stated that she thought his failure to make visual contact might indicate an unwillingness to take direction from the trustees. She testified that he seemed to direct all his answers to Mr. Lalonde, the only staff person present, and that this made a negative impression on her.

Turning to the specific criticisms made of Ms Ladouceur's conduct as chair of the selection committee, I do not accept the Commission's submission that I should infer discriminatory intent from the fact that she applied a preference to experience in the elementary panel. Although, as discussed above, it was inappropriate to change to criteria without advising the candidates, her explanation that the new board needed to recruit at the primary level, was entirely credible. Ms Ladouceur also gave a credible explanation for the fact that the interview notes of committee members had been destroyed. Whether or not it was appropriate in the circumstances, I accept her explanation that it was done to ensure the confidentiality of the process. She could not recall if she herself had instructed members to destroy their notes, or if Mr. Lalonde had done so.

Ms Ladouceur's explanation as to why it was necessary to cut off the complainant's interview was consistent with her testimony about her alleged insistence on a rigid process, or the appearance of fairness, in the committee's pre-interview meeting. She testified that there were two reasons for taking extra care with the process: the fact Mr. Abouchar's wife was a trustee and the fact that Mr.

Abouchar was known to be dissatisfied with the fairness of the first competition. In these circumstances, Ms Ladouceur testified that she alerted the committee in the pre-interview meeting to the need to ensure that all candidates were treated equally. Although she maintained that she allowed him to complete his answers to all the questions, and was not rude, she acknowledged that she did cut him off when he went over the time limit in addressing his own issues at the end of the interview. She explained that she did so in order to ensure that he did not receive special treatment.

Mr. Derstine's evidence takes a different view of Ms Ladouceur's role. He testified that she insisted on the appearance of fairness because, as she told the committee, she thought Mr. Abouchar was likely to challenge the decision if he was not successful. He believed that Ms Ladouceur would favour a Franco-Ontarian for such a senior position in the new board, and testified that he "felt idiotic in going through the process", because he knew in advance that Mr. Abouchar had "no chance". He stated in evidence:

There were three members of the committee who wouldn't have hired Mr. Abouchar. Certainly, there was an attempt made to, formally, to make it appear as if everybody was getting equal justice. Probably, the attempt was so insidious because people knew in advance that everybody wasn't going to get equal justice.

And later with reference to the meeting before the interviews:

No, the only discussion was about the fact that Alfred [Abouchar] might appeal and had appealed and might appeal and appearances of equality for everybody was of prime importance.

Conclusion on Factual Issues

In order to establish discrimination, the Commission must prove on the balance of probabilities that the selection process and/or decision was tainted by considerations contrary to the *Code*. In reviewing the evidence relied upon by the Commission, I find that the following pieces of evidence emerge most

strongly as support for an inference that the competition was tainted by considerations contrary to the *Code*:

- * The unexplained failure of Mr. Lalonde to provide copies of the detailed job description to the members of the selection committee, with the result that they were hampered in their ability to match the job requirements to the qualifications of the candidates;
- * Mr. Lalonde's recommendation to the trustees that the interview committee be composed of himself, Ms Ladouceur and Ms Joly, a group which was weighted against the complainant;
- * Mr. Derstine's evidence that he knew that Ms Ladouceur, Mr. D'Aoust and Mr. Lalonde would not support Mr. Abouchar as a non-Franco-Ontarian, based on his knowledge of these three committee members;
- * Ms. Ladouceur's tendency, as shown in her testimony, to distinguish between francophones based on their first language and heritage, and to view the establishment of the new school board as part of a struggle by Franco-Ontarians to resist assimilation into the anglophone community;
- * Mr. Derstine's evidence that Ms Ladouceur stated before the interviews that Mr. Abouchar had appealed and might appeal and that it was therefore important that the process appear fair.

I am satisfied, on the balance of probabilities, that the evidence taken as a whole supports an inference that several members of the committee were predisposed against Mr. Abouchar, and that in each case, one of the reasons for their pre-disposition against his candidacy was the fact that he was not a Franco-Ontarian. I find that this predisposition against the complainant, on the basis of place of origin, affected the treatment afforded to him in the selection *process*, and in particular, affected the decisions made about the composition of the selection committee, as well as the pre-occupation with an appearance of fairness in establishing the process.

However, I find that the evidence does not support a finding that race, place of origin, ethnic origin, reprisal or association with the multicultural community, had an impact on the selection *decision* made by the committee, and approved by the CÉFCUT trustees. In making this finding, I rely on the consistent evidence of all the witnesses to the effect that there were two decisive factors in the decision. First and foremost, the decision of the committee was based on the superior experiential qualifications of Ms Morrisette, as acknowledged by all the members who gave evidence, including Mr. DeRose. All of the trustees were looking for supervisory experience to help the new board manage what was expected to be a difficult start-up period. Ms. Morrisette had the experience that they were looking for, and Mr. Abouchar did not. Even Mr. Derstine recognized this and it was one of the reasons why he voted for Ms. Morrisette.

Secondly, the testimony of Mr. Derstine and Ms Ladouceur emphasized that part of their reason for choosing Ms Morrisette was their assessment that she would work easily and well with the school board's various constituencies (parents, teachers, area boards, community members). Ms Ladouceur emphasized Ms Morrisette's apparent ability to listen and her flexibility, as evidenced by her conduct in the interview. Mr. Derstine commented on her "gentle" manner being an asset for the position and acknowledged that, because of his poor interview performance, he questioned Mr. Abouchar's ability to operate effectively under pressure, particularly the immediate short-term pressure of taking over five schools. Mr. Derstine also testified that he favoured Ms Morrisette in part because he believed she would work easily and well with Mr. Lalonde, whereas he believed Mr. Lalonde and Mr. Abouchar would have some difficulty working together at the outset because of their different views of the priorities facing the new board. Although these more subjective factors can be an indication of non-*bona fide* considerations, any possible inference to that effect is undercut by the fact that Mr. Derstine, one of Mr. Abouchar's acknowledged supporters, testified that Ms Morrisette outperformed the complainant in these areas.

Finally, I note that there was no evidence from any witness suggesting that there was any discussion after the interview of Mr. Abouchar's place of origin or racial/ethnic background, or of his association

with the multicultural community or the fact that he had filed a previous human rights complaint. Mr. DeRose, who supported Mr. Abouchar's candidacy, testified that supervisory experience was *the* issue considered with respect to Mr. Abouchar's qualification for the position and that he did not believe that discriminatory factors influenced the selection decision of the committee. Even Mr. Derstine, who strongly believed Mr. Abouchar went into the competition at an unfair disadvantage, acknowledged in his testimony that he told CÉFCUT counsel in 1990 that he did not think that Mr. Abouchar was discriminated against in the result. I have come to the same conclusion.

I conclude on all the evidence that the Commission has not satisfied the burden of proving that race, ethnic origin, place of origin, association, or reprisal were factors in the *selection decision* by CÉFCUT in the 1988 competition. However, I am satisfied that the *selection process* was tainted by consideration of the fact that Mr. Abouchar was not a Franco-Ontarian, in other words, on the basis of place of origin.

REPRISAL

I have determined that Mr. Abouchar's previous human rights complaint was a factor in the Metro Board competition, but not in the CÉFCUT competition. The Metro Board submitted that, even if consideration of the human rights complaint against the North York Board was found to be a factor in its decision not to hire Mr. Abouchar, this circumstance would not, in and of itself, establish a violation of s. 7 (now s. 9) of the *Code*. The section provides: consideration of Mr. Abouchar's previous human rights complaint, and consider consideration of Mr. Abouchar's previous human rights complaint, and ration of Mr. Abouchar's previous human rights complaint, and

Every person has a right to claim and enforce his or her rights under this Act, to institute and participate in proceedings under this Act and to refuse to infringe a right of another person under this Act, without reprisal or threat of reprisal for so doing.

The Metro Board distinguished this language from the wording in the pre-1981 *Code* and other provincial human rights statutes which do not include the word “reprisal”. Counsel argued that the inclusion of the word “reprisal” required that there to be evidence of a specific intention to retaliate because of a previous complaint. Even if Ms Gillipsie were found to have raised and relied upon Mr. Abouchar’s previous complaint as a reason for not offering him the position, the evidence would fall “far short” of demonstrating reprisal in the absence of evidence of a negative animus or a desire to “advance or avenge” the North York Board’s interests against Mr. Abouchar. Metro Board argued that a finding of reprisal required that the precise reason for refusing to hire Mr. Abouchar be to “repay” him or “get back at him” because of what he had done to the North York Board in filing the previous complaint.

Counsel noted that Ms Gillipsie was from the Scarborough FLAC, and that there was no evidence of a connection between Ms Gillipsie and the North York Board which would support a finding that she was “avenging” the interests of that board. Further, counsel argued that if Ms Gillipsie refused to support Mr. Abouchar because she believed that the previous complaint meant he was a troublemaker, and a potentially difficult employee, that would be inappropriate but would not constitute reprisal under the statute. On those facts, according to Metro Board counsel, retribution would not be the reason for not supporting Mr. Abouchar; the reason for not supporting him would be a honest assessment that the filing of a complaint was an indication that he would not be a good employee.

I have found on the facts that Ms Gillipsie refused to support Mr. Abouchar’s candidacy, and that a stated reason for her refusal was the fact that he had filed a human rights complaint against the North York Board. I accept that Ms Gillipsie told the committee that the complaint demonstrated that he was a troublemaker. I have no difficulty in finding an intention on her part to prevent his employment because he had filed the complaint. She clearly raised the complaint as an indication that he would not be a good person to hire, and I have found that the complaint continued to be a factor in her opposition to his candidacy.

Although the Commission has argued, based on the decision in *Entrop v. Imperial Oil*, [1996] 96 CLLC para. 230-001 at 145-007 (as upheld by the Divisional Court in an unreported decision released on February 6, 1998), that intention is not a necessary element in reprisal, my finding that Ms Gillipsie did intend a negative impact on the complainant makes it unnecessary for me to consider that submission. Further, I reject the argument of the Metro Board that a higher level of intention, amounting to a malice and revenge, is necessary for a finding of reprisal. The inclusion of the word "reprisal" in the 1981 amendments does not, in my view, require the complainant or the Commission to prove malice or a specific intention to punish the complainant. Neither do I interpret s. 7 (now s. 9) to require proof of a connection between the respondent and the person/organization against whom the original complaint was filed, except to the extent that the respondent (in our case, Ms Gillipsie) must clearly know of the complaint, and have a negative response to it which is brought to bear on the complainant. The reading of the statute urged upon me by Metro Board is not necessitated by the plain meaning of the word "reprisal" and would be contrary to the basic principles of interpretation which the Supreme Court of Canada has applied to human rights legislation. In *Canadian National Railway Company v. Canada (Human Rights Commission)*, [1987] 1 S.C.R. 114 at 1134, the Court summarized the correct approach to the interpretation of human rights legislation as follows:

Human rights legislation is intended to give rise, amongst other things, to individual rights of vital importance, rights capable of enforcement, in the final analysis, in a court of law. I recognize that in the construction of such legislation, the words of the Act must be given their plain meaning, but it is equally important that the rights enunciated be given their full recognition and effect. We should not search for ways and means to minimize those rights and to enfeeble their proper impact. Although it may seem commonplace, it may be wise to remind ourselves of the statutory guidance given by the federal *Interpretation Act* which asserts that statutes are deemed to be remedial and are thus to be given such fair, large and liberal interpretation as will best ensure that their objects are attained.

Accordingly, I conclude that the consideration of Mr. Abouchar's previous human rights complaint by the interview committee in the Metro Board competition was an infringement of his right under the *Code* to claim and enforce his rights, and to institute proceedings under the *Code* without reprisal for so doing.

VICARIOUS LIABILITY

Metro Board

In making submissions on liability, the Metro Board relied on the fact that the Task Force members were appointed by the Minister of Education and that there was no legal relationship between the Board and the Task Force, or any subcommittee of the Task Force. However, counsel acknowledged that the position at issue was to commence as a secondment to the Board and that senior staff of the Board participated in the selection process. In these circumstances, counsel acknowledged the responsibility of the Board, as would-be employer, to ensure that reasonable steps were taken to set up a competition that was fair and not tainted by considerations contrary to the *Code*.

Section s.45(1) of the *Code* provides:

For the purposes of this Act, except subsection 2(2), subsection 5(2), section 7 and subsection 44(1), any act or thing done or omitted to be done in the course of his or her employment by an officer, official, employee or agent of a corporation, trade union, trade or occupational association, unincorporated association or employers' organization shall be deemed to be an act or thing done or omitted to be done by the corporation, trade union, trade or occupational association, unincorporated association or employers' organization.

Counsel for the Board did not dispute its liability for Mr. Lalonde's conduct if he were found not to have taken adequate measures to ensure that the recommendation adopted by the trustees was not based in whole or part on an element prohibited by the *Code*. The Metro Board is responsible for the conduct of Mr. Lalonde in failing to take adequate steps to ensure that consideration of the previous human rights complaint did not affect the outcome of the selection process, in failing to alert the Director of Education to the likely impact of this inappropriate consideration, and in failing to advise

the Director that the recommendation to the Board should be to accept the majority decision approving Mr. Abouchar as the successful candidate.

CÉFCUT

In the case of CÉFCUT, the vicarious liability which flows from Mr. Lalonde's conduct as an employee is in addition to its direct responsibility for the conduct of the trustees on the selection committee. I find CÉFCUT to be responsible for Mr. Lalonde's failure, as the senior staff person to the new school board, to establish a competition process untainted by considerations infringing the complainant's rights under the *Code*.

SUMMARY OF FINAL DETERMINATIONS

Metro Board Complaint

The complaint against the Metro Board is dismissed in respect of the allegations of discrimination on the basis of race, ethnic origin, place of origin, and association with the multicultural francophone community.

The complaint against the Metro Board is upheld in respect of the allegation of reprisal. The Metro Board allowed consideration of Mr. Abouchar's earlier human rights complaint against the North York Board of Education to be a contributing factor in the decision not to offer him a seconded position as an assistant superintendent in 1988. In doing so, the Metro Board infringed Mr. Abouchar's right to claim and enforce his rights under the *Human Rights Code* without reprisal.

CÉFCUT

The complaint against CÉFCUT is dismissed in respect of the allegations of discrimination on the basis of race, ethnic origin and/or association with the multicultural francophone community. The allegation of reprisal is also dismissed.

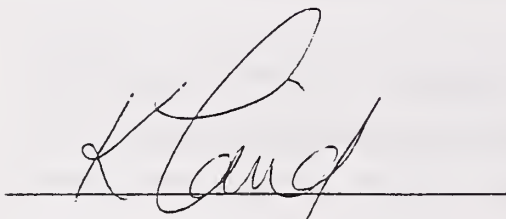
The complaint against CÉFCUT is upheld *in part* in respect of the allegation of discrimination on the basis of place of origin. Mr. Abouchar was not afforded fair and equal treatment during the 1988 job competition held by CÉFCUT. The fact that Mr. Abouchar was not a person of Franco-Ontarian heritage was one factor which affected the treatment afforded to him during the competition. However, the selection decision itself was not influenced or tainted by considerations which infringed Mr. Abouchar's rights under the *Human Rights Code*. The decision to award the assistant superintendent position to another candidate was based solely on an honest and supportable assessment that the successful candidate was more qualified and better able to perform the requirements of the job.

REMEDY

This hearing was bifurcated and the issue of remedy has not been addressed in evidence or submissions. Accordingly, the hearing will reconvene by conference call on a date to be set by the Registrar. Counsel are encouraged to have discussions in advance of the hearing reconvening to determine if evidence can be introduced by agreed statement of fact.

Further, if there are any issues related to the recent legislative changes affecting respondent school boards, counsel should be prepared to address those issues.

Dated at Toronto this 27th day of March 1998:

A handwritten signature in dark ink, appearing to read 'K. Laird', is written over a horizontal line.

Katherine Laird
Member, Board of Inquiry